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90-261

Supreme Court, U.S.
FILED

JUL 30 1990

JOSEPH F. SPANIOLO, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

LLOYD OLSON,
Trustee for LIEBCHEN TRUST,
Petitioner,

vs.

DOUGLAS J. MARSTON, et al.,
Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LLOYD OLSON
P.O. Box 9172
Helena, MONTANA
FIRST JUDICIAL DISTRICT
In Propria Persona
Ph.(406) 442-0069



QUESTIONS PRESENTED

IS AN ORDER OF A DISTRICT COURT THAT
DISMISSES A CASE WITHOUT PREJUDICE AS TO
SOME DEFENDANTS IN AN ACTION AN APPEALABLE
ORDER, WHEN THE ORDER IS DISPOSITIVE OF
AN ISSUE THAT LEAVES THE PARTY AFFECTED
UNABLE TO PROCEED WITHOUT SACRIFICING HIS
RIGHT TO HIS RELIGIOUS BELIEFS;

And,

IS A FINAL JUDGMENT IN SUMMARY
PROCEEDINGS APPEALABLE?

THE PARTIES

The Petitioner, Lloyd Olson, is a natural individual, appearing in his own proper person, sui juris, and as a Trustee of the Liebchen Trust, a common law trust organized under the laws of the State of Oregon.

The Respondents, Douglas J. Marston, Christopher E. Zimmerman, Warren Taylor Jr., David Chausse, and Burton D. Durgan, are natural individuals.

The Respondent, Aglietti, Pennington, Rodey & Offret, is a law firm organized under the laws of the State of Alaska, and is an artificial and juristic person.



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CONSTITUTIONAL PROVISIONS

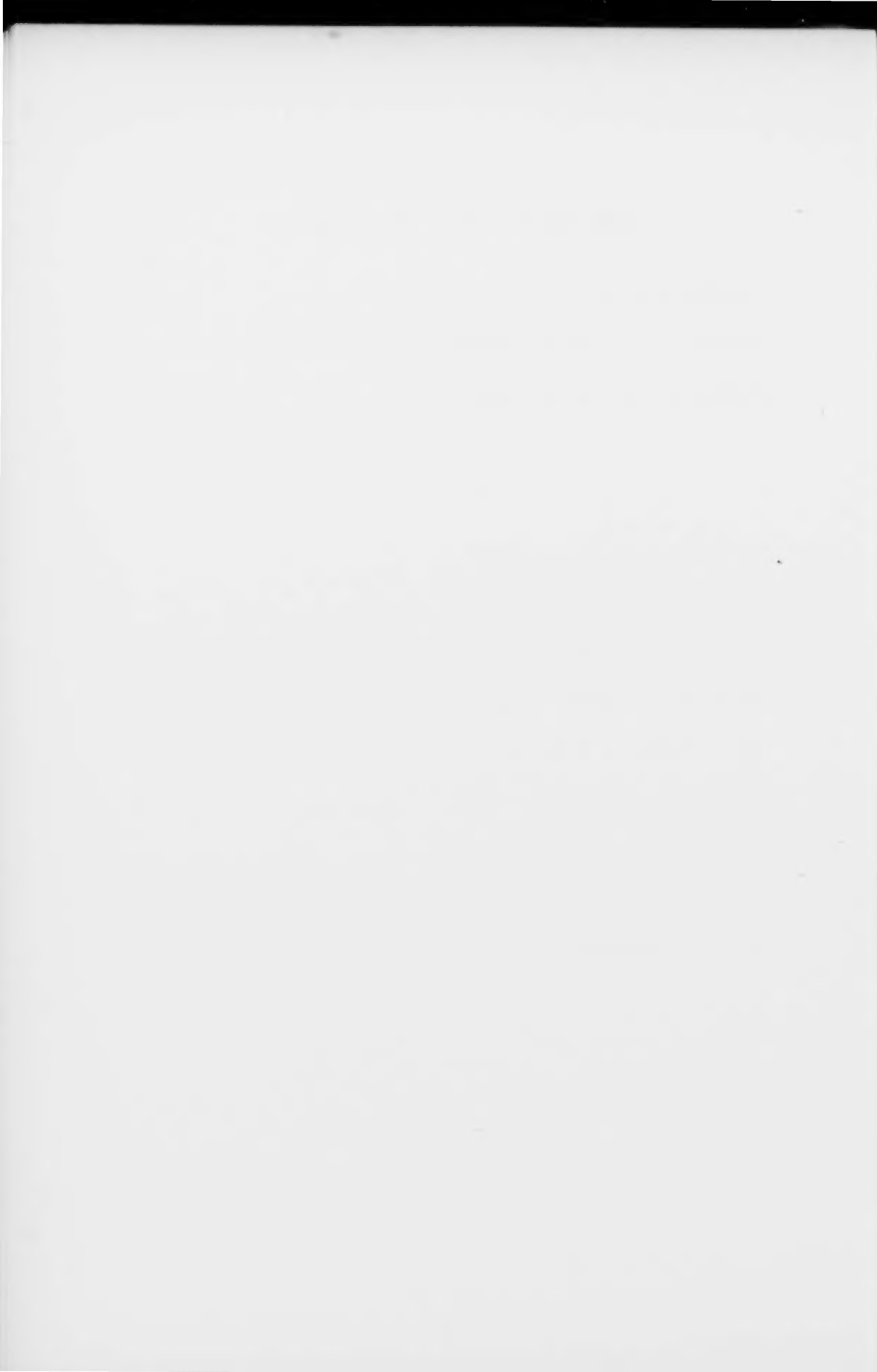
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ASSEVERATION

STATE OF MONTANA)
) ss.
FIRST JUDICIAL DISTRICT)

COMES NOW the Petitioner, Lloyd
Olson, a Free White male of Lawful age,
subjecting himself to the penalties for
perjury by way of this Asseveration, and
does aver as follows:

That the statements made herein are
true; and the attached appendix is a true
account of the proceeding in the court
below.

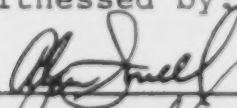
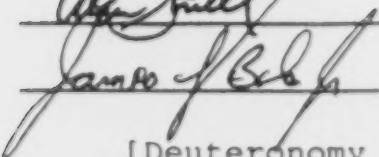



LLOYD OLSON

(seal)

SUBSCRIBED to this 26th day of July, 1990.

Witnessed by:


_____, witness

_____, witness

[Deuteronomy 19:15]



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

LLOYD OLSON,
Trustee for LIEBCHEN TRUST,

Petitioner,

vs.

DOUGLAS J. MARSTON, et al.,

Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COMES NOW the Petitioner, Lloyd
Olson(hereinafter OLSON), in his own
proper person, sui juris, and petitions
the Supreme Court of the United States



for a Writ of Certiorari to review the dismissal of his appeal by the 9th Circuit Court of Appeals; of a direct appeal from the final judgment of the District Court for the District of Alaska.

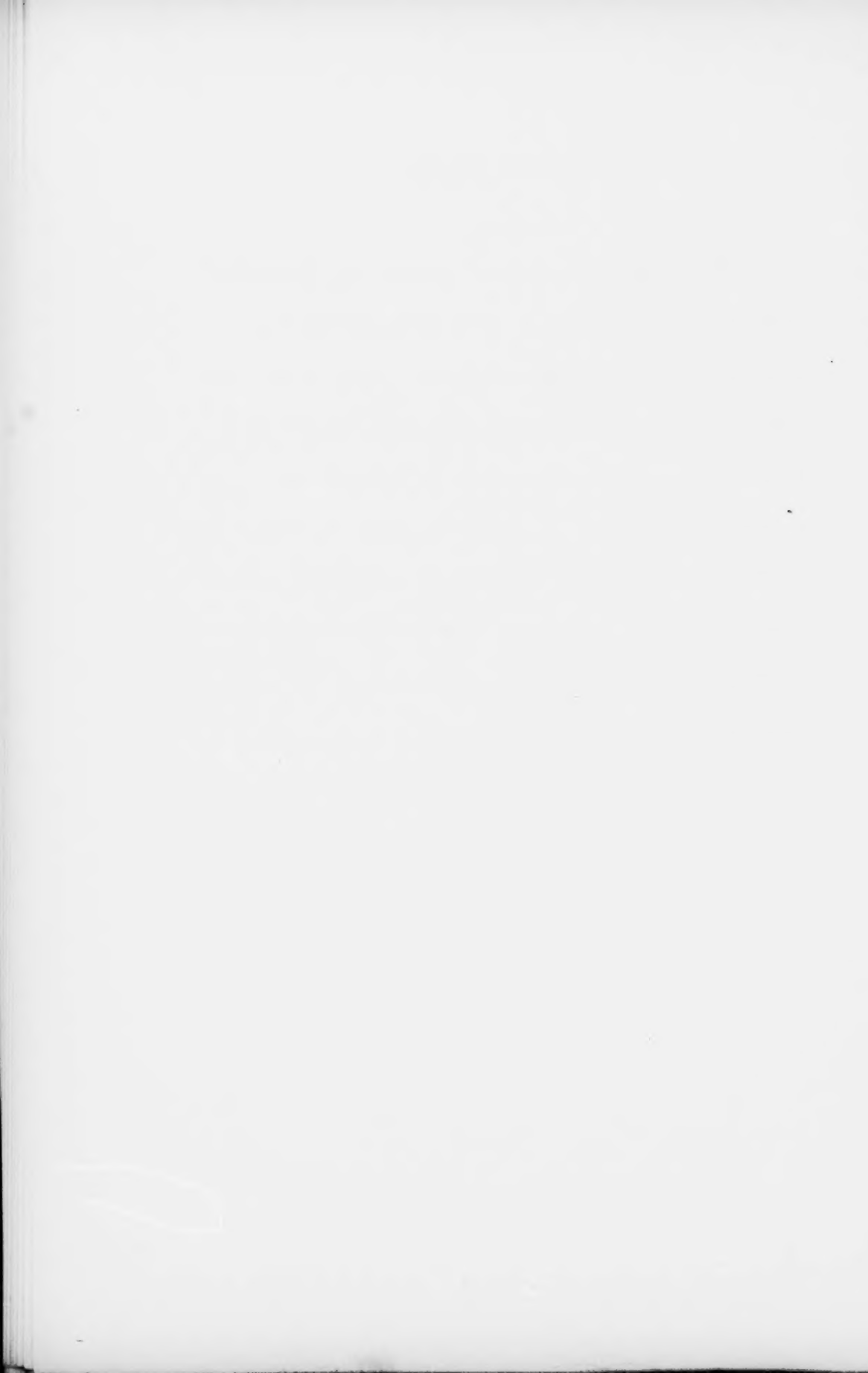
It is OLSON's contention that the order and judgement of the District Court was and is appealable, because it was and is final for all purposes of appellate review.

Further, one of the points on appeal before the Circuit Court below was in regard to summary judgment granted to one of the Defendants. It is well settled that summary judgment is appealable.



OPINIONS BELOW

The United States Court of Appeals for the 9th Circuit has dismissed this Petitioner's appeal before that court by interpreting an order of the District Court as a non-appealable order, by Order dated and filed the 1st of May, 1990.(C.C.A. #90-35033; a true and correct copy of this order accompanies this petition, and is further reproduced in the appendix hereto at page 3).



JURISDICTION

This court has jurisdiction pursuant to Article III of the Constitution of the united States, 28 U.S.C. §1651, and Part III of the Rules of the Supreme Court of the united States, Rules 10 through 16.

The appeals court has evaded important questions of law and has so far departed from the accepted and usual course of judicial proceedings so as to call for this Court's power of supervision.

The dismissal of this Petitioner's appeal in the court below leaves him without remedy.



CONSTITUTIONAL PROVISIONS
INVOLVED

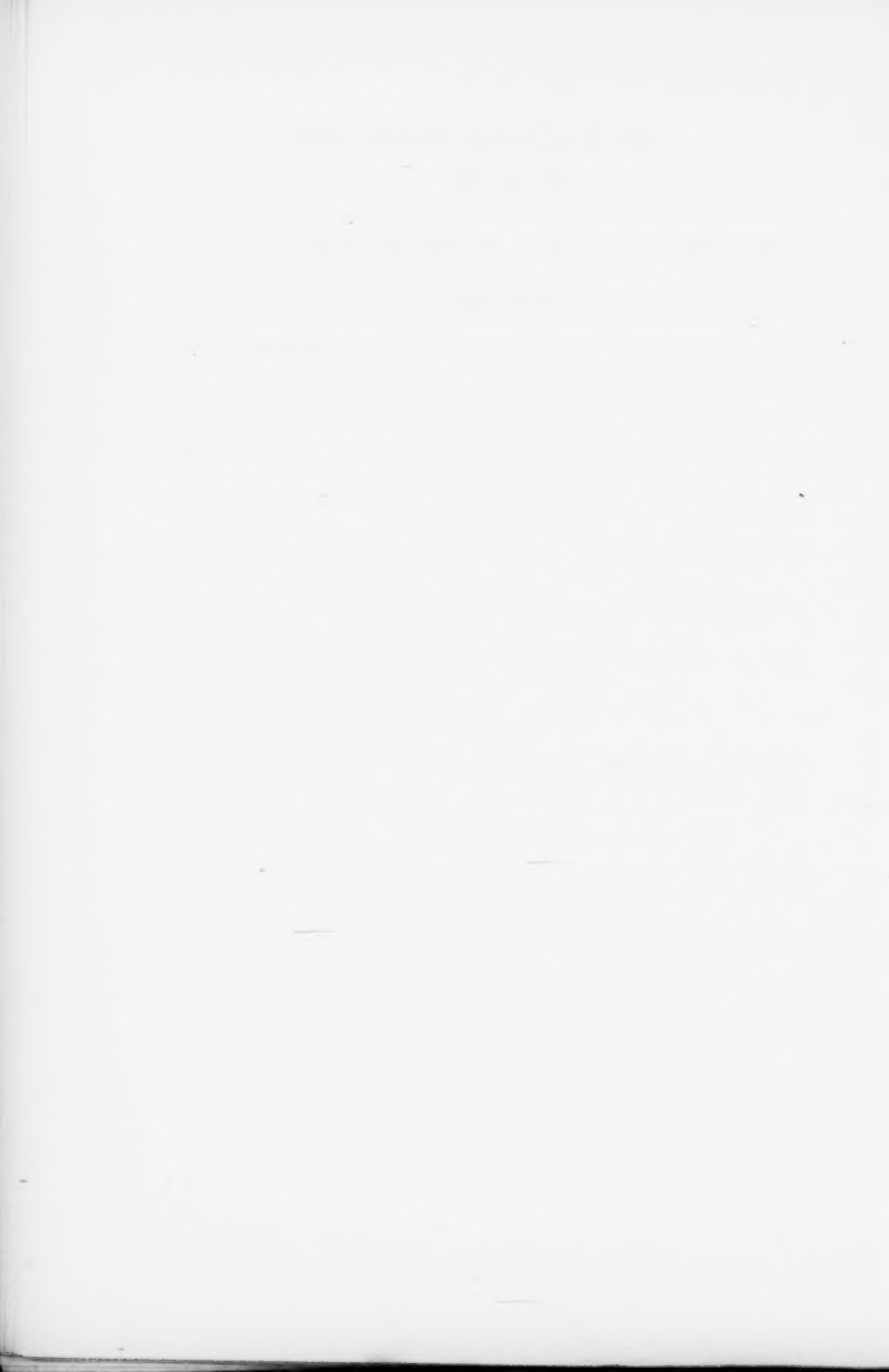
CONSTITUTION OF THE UNITED STATES

First Article in Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievance.

Fifth Article in Amendment
(in pertinent part)

No person shall.....be deprived of life, liberty, or property, without due process of law;



STATUTORY PROVISIONS

28 U.S.C. §1651

WRITS (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. §1654¹

APPEARANCE PERSONALLY OR BY COUNSEL

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

¹ From the Judiciary Act of 1789, §35

"In all the courts of the United States the parties may plead and manage their causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein."



STATUTORY PROVISIONS cont.

28 U.S.C. §1291

FINAL DECISIONS OF DISTRICT COURTS
(in pertinent part)

The courts of appeals.....shall have jurisdiction of appeals from all final decisions of the district courts of the United States,.....

RULES

Rule 2 - Federal Rules of Appellate Proc.

In the interest of expediting decision, or for good cause shown, a court of appeals may,,suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(in pertinent part)



STATEMENT OF THE CASE

The Petitioner, hereinafter OLSON, filed a suit against the Respondents on the 18th day of October, 1988, involving diversity of citizenship and deprivation of rights(R. - docket # 1).

On the 20th of January, 1989, OLSON filed an Amended Complaint(no Answer as yet having been filed)(R. - Docket #'s 33 & 34). The Complaint alleged a deprivation of rights committed by the Respondents against OLSON. It was alleged that the Defednants MARSTON, AGLIETTI, PENNINGTON, RODEY & OFFRET, TAYLOR, CHAUSSE, and DURGAN, seized property belonging to OLSON and the Liebchen Trust, under color of law, and sold it without judicial authorization, and converted the proceeds to their own use. The result of which deprived OLSON of due process of law and equal protection



of the laws.

The Complaint further alleged that Defendant ZIMMERMAN, as a state district court judge¹, willfully and knowingly failed/refused to enforce state law which as a state judicial officer he had a mandatory obligation to do. OLSON charged ZIMMERMAN with non-feasance and malfeasance; of conspiring with the other Defendants to deprive OLSON of his rights and property. (R. - Docket #'s 33 & 34).

It was alleged that Defendant MARSTON committed perjury in state court proceedings and that Defendant AGLIETTI suborned that perjury.

The Complaint further raised a general constitutional challenge to state court procedures. (R. - docket #'s 33 & 34).

¹ In Alaska, a district court judge is a judge of inferior authority and the state district court is not a court of record.



On the 7th of August, 1989, the Defendants filed a motion to dismiss the complaint, relying solely upon a prior decision of the 9th Circuit Court of Appeals; challenging OLSON's standing to maintain an action in his own proper person². ZIMMERMAN filed a non-opposition to this and concurred in it.(R.- Docket #'s 48-50).

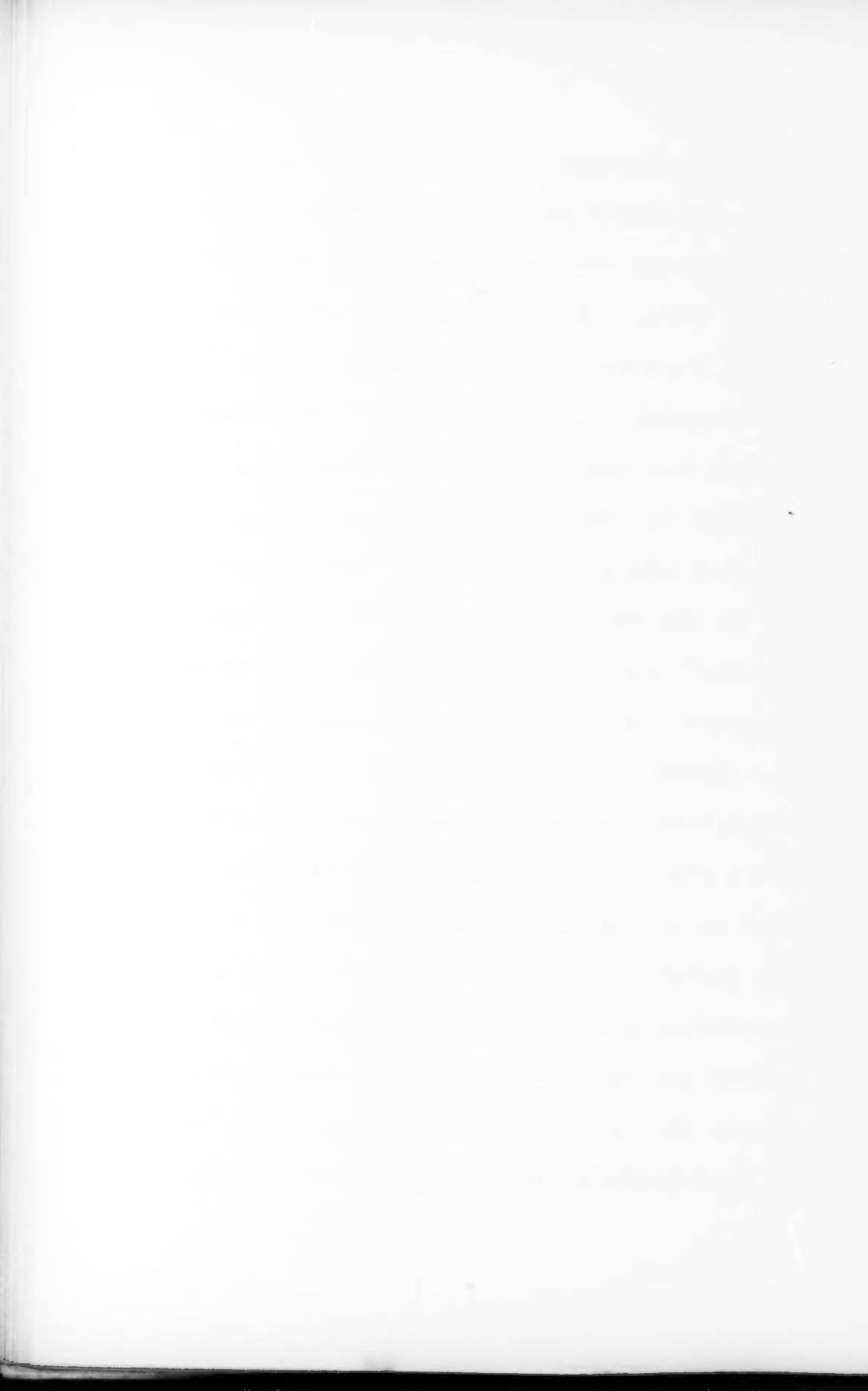
OLSON filed his opposition to this motion to dismiss on the 24th of August, 1989, with an analysis of the case relied upon by the Defendants, citing to the defects and deficiencies of that decision; and the inadequately briefed appeal in that case.(R.- docket #52). He pointed out that neither the appellant in that case in his briefs, nor the judges of the Court of Appeals, cited to or relied upon any of

² C.E. Pope Equity Trust v. United States,
818 F.2d 696(9th Cir. 1987)



the law contained in the Law of Trusts or in Corpus Juris Secundum regarding trusts and trustees. He further pointed out that it was never intended from the beginning by the Founders that only lawyers were to have a monopoly on the judicial processes in this country; and that although the language of the Judiciary Act of 1789 had been changed through the years, there was no change in substance. That the word "counsel" is not synonymous with the words "attorney" or "lawyer".(R.- docket #52).

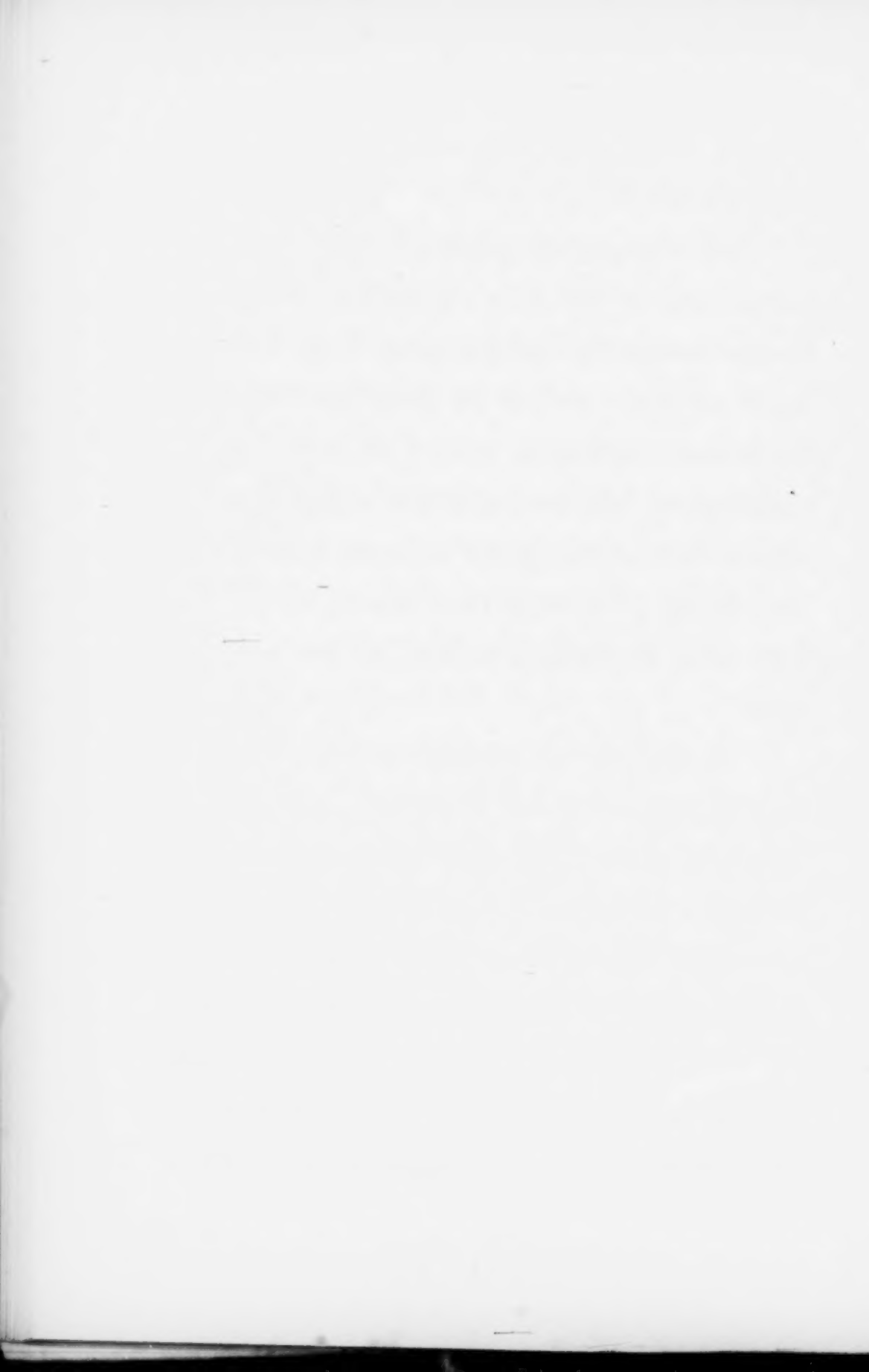
However, paramount to all other considerations, OLSON apprised the District Court and all parties that his sincerely held religious beliefs precluded him from any association whatsoever with lawyers/attorneys; and for that reason he could not retain the services of an attorney to prosecute the action. This he supported with an Asseveration setting forth his religious



beliefs concerning lawyers/attorneys.(R.- docket #52).

The Defendants filed a reply to OLSON's opposition on the 29th of August, 1989, simply recapping the position they set forth in their motion to dismiss. Their reply was completely devoid of anything opposing or addressing OLSON's position in regard to his religious beliefs concerning lawyers or attorneys.(R.- docket #53). They were absolutely silent on the subject.

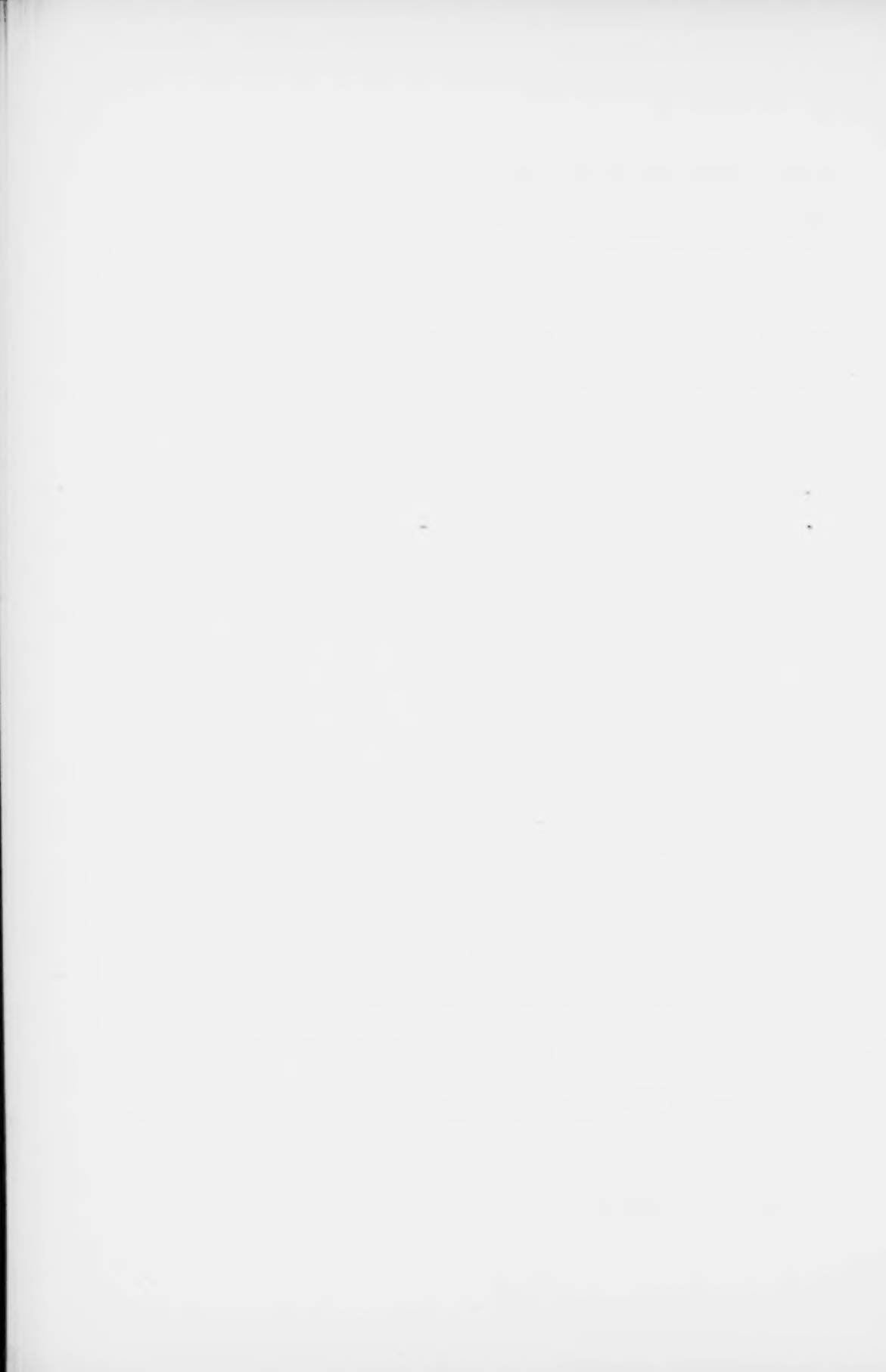
On the 1st of November, 1989, Defendant ZIMMERMAN filed a motion for summary judgment predicated upon the Doctrine of Judicial Immunity.(R.- docket #54). In his motion he argues that OLSON's reliance upon Randall v. Brigham, 19 L.Ed. 285(1869) is misplaced and that subsequent decisions by the nation's highest court have supplanted the holding in the Randall case. How-



ever, they relied upon no authority for that contention.

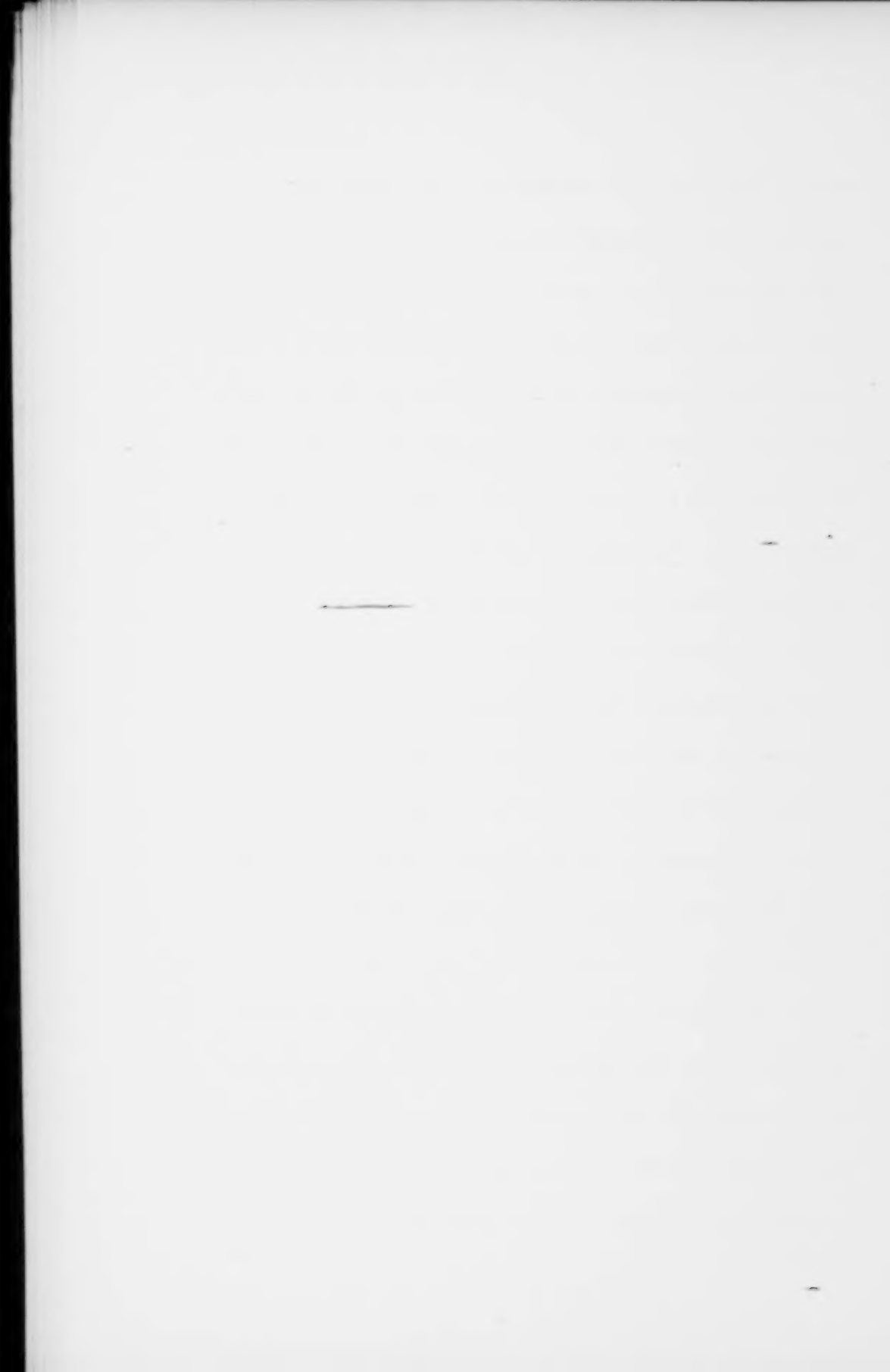
The District Court entered an order on the 2nd of November, 1989, in regard to the motion to dismiss, directing that OLSON retain an attorney by the 8th of December, 1989, or the court would dismiss the action. (R.- docket #55). The District Court made no findings of fact or conclusions of law in its order. It did not address OLSON's religious position on the issue. Therefore, neither the Defendants in their reply to OLSON's opposition or the District Court in it's Order, addressed OLSON's position in regard to the proscription imposed by his religious beliefs against association with attorneys/lawyers. No justification was set forth for the court's burdening of OLSON's religious beliefs.

On the 13th of November, 1989, OLSON filed his opposition to Defendant ZIMMER-



MAN's motion for summary judgment.(R. - docket #56). OLSON again cited to and relied upon the fact that ZIMMERMAN was not a judge of a court of general jurisdiction, but a judge of a court of inferior authority created by statute with clearly defined limitations. And that the case of Randall v. Brigham, supra, was controlling; and as such, the Doctrine of Absolute Judicial Immunity was inapplicable in the case. He also showed the existence of contested issues of material fact which should have precluded the court from disposing of the case in summary judgment(a timely demand for jury trial was indorsed in the Complaint; R. - docket #1).

The District Court, by order dated the 12th of December, 1989, granted summary judgment to Defendant ZIMMERMAN and directed the Clerk to dismiss the Complaint as to the other Defednants for



OLSON's failure to retain an attorney; accordingly, judgment was entered and filed on the 15th day of December, 1989. (R. - docket #59).

On the 2nd of January, 1990, OLSON filed a timely Notice of Appeal from the entry of final judgment in the action. (R. - docket #60).

On or about the 26th of February, 1990, OLSON received an Order from the 9th Circuit Court to show cause as to why the appeal should not be dismissed for lack of jurisdiction due to the fact that it appeared that OLSON was attempting to appeal a "non-appealable" order. (See APPENDIX, page 1). The order further referenced to 28 USC §1291 and Scott v. Eversole Mortuary, 522 F.2d 1110(9th Cir. 1975).

On the 28th of February, 1990, OLSON responded with an Opposition to Proposed Dismissal of Appeal. OLSON apprised the



Court of Appeals that the District Court had imposed a requirement that he retain the services of an attorney or it would dismiss the action. OLSON's position on this is one that involves the First Article in Amendment - that of his religious beliefs; and that a dismissal on this ground would cause OLSON a deprivation of his rights. In essence, he would have to surrender one constitutional right in order to assert another, that of Due Process. That a dismissal of the appeal would deprive OLSON of his only remedy, that of appeal and appellate review of the District Court's order.

Secondly, the District Court's disposal of the case also involved granting summary judgment to Defendant ZIMMERMAN under FRCP 56, which was also the subject of the appeal. That it is OLSON's understanding that a disposition of a case in

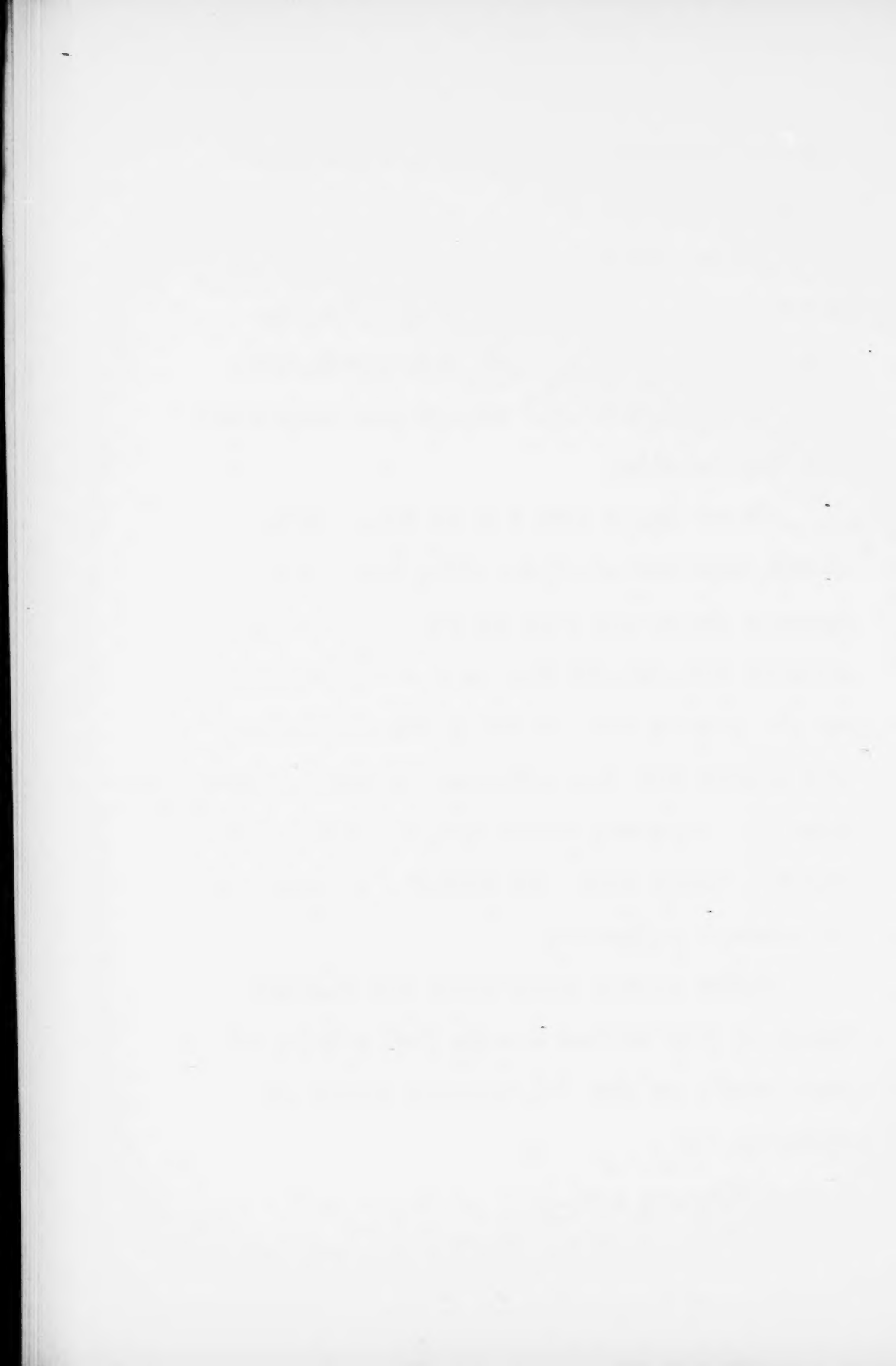


summary judgment is and always has been appealable.

On or about the 20th of April, 1990, OLSON filed his Opening Brief with the Clerk of the 9th Circuit Court(with all requisite copies) and served the same upon all the parties.

On or about the 4th of May, 1990, OLSON received an Order from the Court of Appeals dated the 1st of May, 1990, dismissing the appeal for lack of jurisdiction, on the ground that OLSON's first point in the appeal was not appealable(See APPENDIX page 3). However, there was no mention of OLSON's other point on appeal in regard to summary judgment.

OLSON herein petitions the Supreme Court of the United States for a Writ of Certiorari to the 9th Circuit Court of Appeals.



REASONS FOR GRANTING THE WRIT

One of the reasons for granting a Writ of Certiorari in this case is because there exists "special and important reasons" that justify the granting of the writ. And these extend beyond the academic or episodic.

"'Special and important reasons' imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion."

Rice v. Sioux City Cemetary,
99 L.Ed. 897,901(1955)
(underlined emphasis added)

OLSON sought to prosecute his suit in the District Court in his own proper person as he believed the law permitted him to do. He still firmly believes that he has such right. See collaterally Faretta v. California, 422 U.S. 806(1975).



However, the Defendants below challenged his standing to do so and the District Court concurred; and entered an order requiring OLSON to retain a lawyer or suffer dismissal of the case. This was done, in full knowledge of OLSON's religious beliefs which absolutely proscribed him from any association with lawyers/attorneys whatsoever.

If OLSON had relinquished his religious beliefs and retained a lawyer, he would have been forever precluded from raising the issue in any subsequent appeal. Tyler v. The Judges, 179 U.S.405(1900); Hendrick v. Maryland, 235 U.S. 610,621 (1915). Hence, OLSON is only entitled to relief if he is damaged; which he has been since the action of the District Court has effectively deprived him of due process in his quest to redress the grievances contained in his complaint.



The issue to be decided here is whether OLSON had a right to appeal the final decision of the District Court and seek appellate review of it. OLSON firmly believes that the District Court's order was and is appealable as it was final - there were no other alternatives for OLSON other than the surrender of his religious beliefs. In essence the District Court was requiring OLSON to surrender one constitutional right (the free exercise of his religious beliefs) in order to assert another (that of his right to due process of law). See collaterally, Simmons vs. United States, 390 U.S. 377, 394 (1968).

This is not a purely "academic" issue because OLSON has been damaged - twice! First in the District Court by the dismissal of his suit; and second in the Court of Appeals by their dismissal of his appeal.



Nor is this an "episodic" case; that is, it is not an isolated case or episode. The issue of religious beliefs that prohibit any association with lawyers/attorneys is also the subject of a case presently docketed in this court. Turnbull v. United States, October Term 1989, No. 89-6813.

In Turnbull, the issues involved are the First and Sixth Articles in Amendment; in the case at bar, it is the First and Fifth Articles. Both involve a proscription against association with lawyers/attorneys due to the religious beliefs of the litigants. One case is civil and the other is criminal.

An analysis of the cases that this Court has decided pursuant to free exercise claims tends to show that OLSON's free exercise claim against association with lawyers/attorneys may not be justifiably burdened by the government. Sherbert v.



Verner, 374 U.S. 398(1963); United States v. Seeger, 380 U.S. 163(1965); Wisconsin v. Yoder, 406 U.S. 205(1972). This was succinctly stated by the Alaska Supreme Court in deciding a free exercise claim:

"Because of the close relationship between conduct and belief and because of the high value we assign to religious beliefs, religiously impelled actions can be forbidden only where they pose 'some substantial threat to public safety, peace, or order,' (Sherbert, supra, at 403), or where there are competing governmental interests that are 'of the highest order and [are] not otherwise served' (Yoder, supra, at 215).

Frank v. State, 604 P.2d 1068,1070 (Alaska 1979)(emphasis added)

The 9th Circuit, in dismissing OLSON's appeal upon the alleged ground that they lacked jurisdiction because the District Court's order was not a final one, is EVADING the issue and not simply avoiding it. They have left OLSON without remedy!!! It appears that if a citizen happens to



hold certain religious beliefs then he is not entitled to redress of grievance or due process of law in the Courts of the United States. Such a proposition is absolutely repugnant to the principles and guarantees set forth in the Constitution. As heretofore stated, OLSON firmly believes that the District Court, by conditioning OLSON's right to redress and due process by requiring him to retain a lawyer, was final within the meaning of 28 USC §1291.

The second point in OLSON's appeal in the 9th Circuit was on the issue of summary judgment. Defendant ZIMMERMAN was a judge of a court of limited jurisdiction and summary judgment was granted to him pursuant to the Doctrine of Absolute Judicial Immunity. It is well settled that a case disposed of in summary judgment pursuant to the express provisions of



Rule 56 is final and appealable. Yet, the 9th Circuit totally ignored this aspect of OLSON's appeal. Another instance of evasion???

There can be no doubt whatsoever that OLSON is entitled to judicial review on this issue.

CONCLUSION

WHEREFORE, OLSON respectfully requests that the Supreme Court of the United States grant this Petition for a Writ of Certiorari to the Ninth Circuit Court of Appeals, and issue such Writ.



Respectfully,



LLOYD OLSON - Petitioner
In Propria Persona

(seal)

SUBSCRIBED to this 26th day of July,
in the Year of Our Lord and Saviour, Jesus
the Christ, Nineteen Hundred and Ninety.

Witnessed by:

, witness

, witness

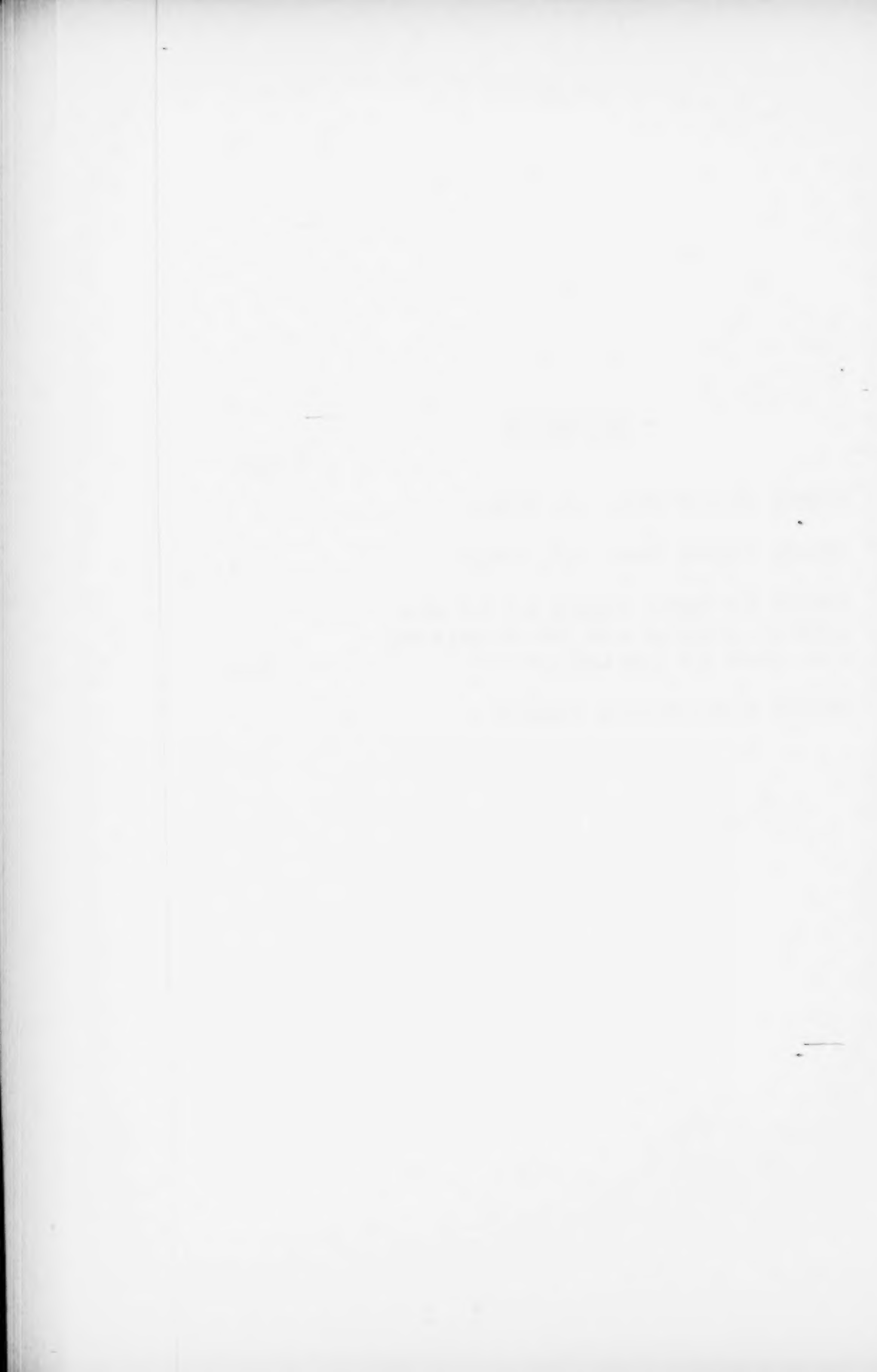
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APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

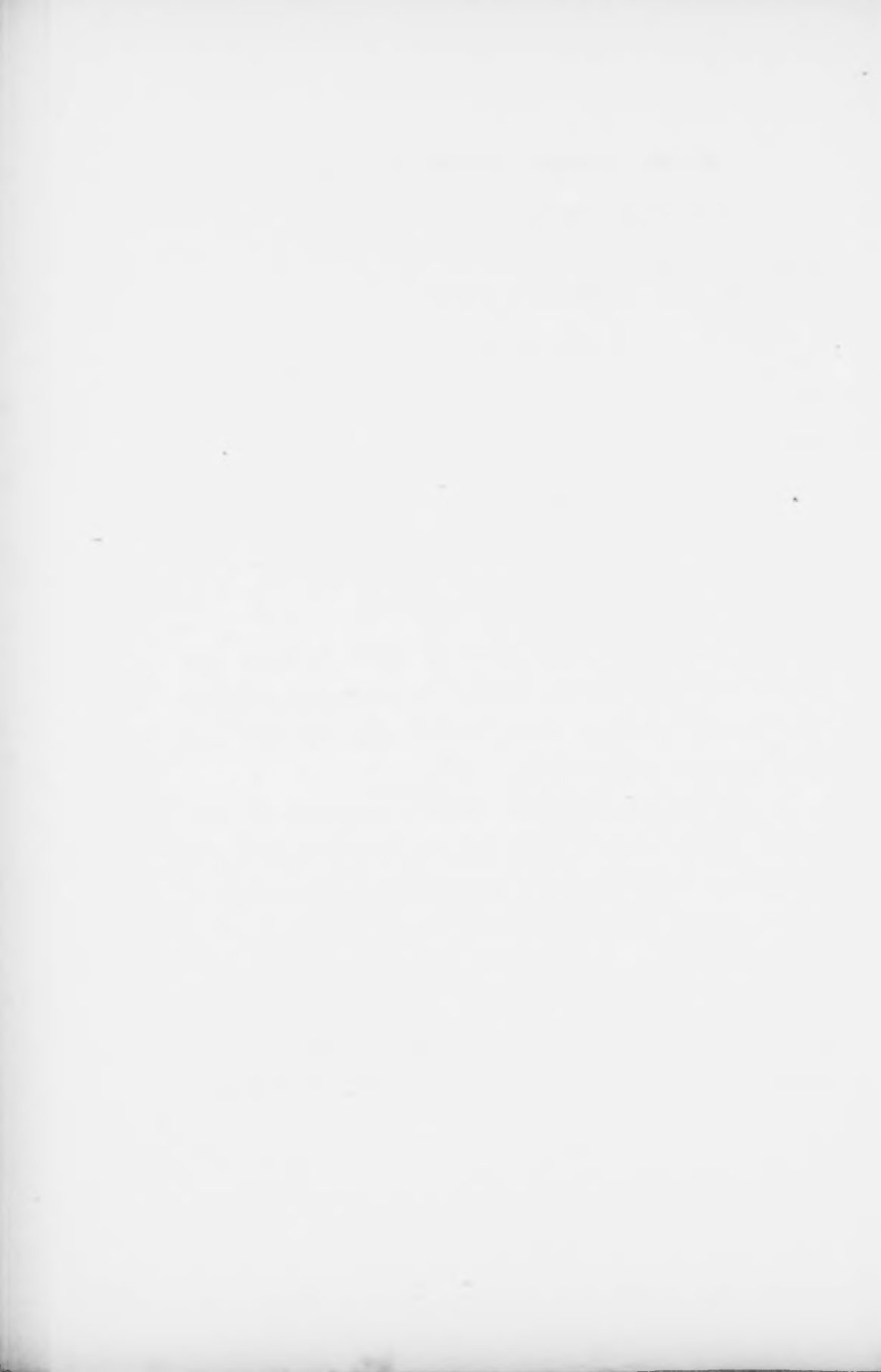
LLOYD OLSON,)	
Trustee for LIEBCHEN TRUST,)	
)	
Plaintiff,)	
)	
vs.)	
	)	<u>ORDER</u>
DOUGLAS J. MARSTON, et al.,)	
	)	Filed
Defendants,	)	<u>Nov. 2, 1989</u>
_____)	

No. A89-212 Civil

THIS MATTER having come before the court on the above named Defendants motion, the court having considered the matter and good cause appearing;

It is ORDERED that Liebchen Trust shall have until 12/8/89 by which time an attorney admitted to practice before this court must appear on its behalf, or else the matter is dismissed.

<u>11/2/89</u>	/s/ H. Russell Holland
Date	U.S. DISTRICT JUDGE



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

LLOYD OLSON,)	
Trustee for LIEBCHEN TRUST,)	
)	
Plaintiff,)	
	)	FILED
vs.	)	<u>Dec. 12, 1989</u>
)	
DOUGLAS J. MARSTON, et al.,)	
)	
Defendants,)	
)	

No. A89-212 Civil

ORDER

(Zimmerman Motion
for Summary Judgment)

Defendant Zimmerman, a judge of the State of Alaska, District Court, has moved for summary judgment in his favor on Counts III, IV, and V of plaintiff's amended complaint. The motion is opposed. Oral argument has not been requested and is not deemed necessary.

For the reasons and upon the authorities set forth by Defendant Zimmerman in his motion for summary judgment, summary judgment is granted. It is clear to this court beyond any doubt that plaintiff has failed to place in issue



any material fact. Defendant Zimmerman is, as a judicial officer of the State of Alaska, entitled to absolute immunity with respect to the conduct complained of in Counts III and IV of plaintiff's amended complaint. The court has concluded that all of defendant Zimmerman's actions were taken in his capacity as a judge, and that the acts taken were within his subject matter jurisdiction. Count V of plaintiff's amended complaint fails to state a cause of action against defendant Zimmerman.

The court, on November 2, 1989, entered an order calling for the dismissal of plaintiff's amended complaint against all other defendants if, prior to December 8, 1989, plaintiff had secured the appearance of counsel to sponsor his complaint against the other defendants. No such appearance having been made, this case is now entirely concluded. The clerk of court shall enter final judgment dismissing plaintiff's complaint with prejudice as to defendant Zimmerman and without prejudice as to the other defendants.



DATED at Anchorage, Alaska, this 12 day
of December, 1989.

/s/ H. Russell Holland
U.S. DISTRICT JUDGE



UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD OLSON,)	
)	
Plaintiff-Appellant,	)	No. 90-35033
)	
vs.	)	DC# CV-89-212
	)	Alaska
DOUGLAS J. MARSTON, et al.,	)	(Anchorage)
)	
Defendants-Appellees,)	
	)	O R D E R

FILED Feb 22, 1990

Appellant's civil appeals docketing statement indicates the appeal is taken from an order dismissing the complaint without prejudice as to all defedants other than Christopher E. Zimmerman. Thus, it appears the order is not appealable. See 28 USC §1291; Scott v. Eversole Mortuary, 522 F.2d 1110(9th Cir. 1975).

Within 14 days of the entry of this order, Appellant shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, appellees may respond within 10



days after service of appellant's memorandum.

If appellant does not comply with this order, the appeal will be dismissed by the clerk under Ninth Circuit Rule 42-1.

FOR THE COURT:

/s/ Meg Gerrity
Conference Attorney

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD OLSON,)	
)	
Plaintiff-Appellant,	)	No. 90-35033
)	
vs.	)	DC# CV-89-212
	)	Alaska
DOUGLAS J. Marston, et al.,	)	(Anchorage)
)	
Defendants-Appellees,)	
	)	O R D E R

FILED May 1, 1990

Before: BROWNING, FLETCHER and BRUNETTI,
Circuit Judges

The court has received appellant's response to the February 22, 1990 order to show cause, as well as appellee's reply to the response. Because the district court dismissed the complaint without prejudice as to all defedants except Christopher E. Zimmerman, this court lacks jurisdiction over the appeal. See Scott v. Eversole Mortuary, 522 F.2d 1110(9th Cir. 1975). Therefore, the appeal is dismissed for lack of jurisdiction.